

1 John Furlong
2 Bar No. 018356
3 General Counsel
4 STATE BAR OF ARIZONA
5 4201 N. 24th Street, Suite 200
6 Phoenix, AZ 85016
7 (602) 252-4804

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IN THE SUPREME COURT
STATE OF ARIZONA

PETITION TO ADD RULE 57.1 AND
RULE 57.2, ARIZONA RULES OF
CIVIL PROCEDURE

Supreme Court No. R-08-0027

**Comment of the State Bar of Arizona
Regarding Petition to Add Rule 57.1
and Rule 57.2, Arizona Rules of Civil
Procedure**

The State Bar of Arizona agrees with the petitioner that the Arizona Rules of Civil Procedure should be amended to add Rules 57.1 and 57.2 to implement the recently enacted statutory provisions giving victims of identity theft a means of obtaining declaratory relief. A.R.S. §§12-771 & 12-772 (effective on January 1, 2009). The petitioner's proposed rules were adopted by this Court, with slight modifications, on an emergency basis as of January 1, 2009. They are referenced below as the "current" rules. Although the State Bar agrees with many of the procedures set forth in the current rules, it believes that they can be improved to enhance their clarity and to deal with several key issues that they currently do not resolve. The State Bar's proposed modifications are set forth in Exhibit "A" and are referenced in this memorandum as the "proposed" rules. To show what the rules would look like if the State Bar's modifications were adopted, Exhibit "B" shows the rules as revised.

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1 errors, thereby promoting judicial and administrative efficiency. Moreover, they facilitate
2 the courts' implementation of the statutes by providing procedural guidance on key
3 subjects left unaddressed by the statutes, such as the availability of discovery.

4 **The State Bar's Proposed Modifications**

5 Although the State Bar endorses the current rules, it also recommends that they be
6 amended to incorporate the substantive and stylistic modifications set forth in Exhibit A.
7 Adopting these proposed changes would make the rules easier to understand and more
8 useful. In certain places, the proposed modifications more closely track the language of
9 A.R.S. §§12-771 and 12-772 to better comport with the legislature's intent. They also
10 include several "gap-fillers" to eliminate ambiguity between the statutes and the current
11 rules. Additionally, the proposed rules modify the format of the current rules so that they
12 are stylistically consistent with the other Arizona Rules of Civil Procedure.

13 **Proposed Amendments to Rule 57.1**

14 **Proposed Section (a): Scope.** The State Bar's proposed section (a) would correct
15 an oversight in current Rule 57.1(A) regarding who has standing to file a petition for
16 relief. Currently, Rule 57.1(A) defines the rule's scope as governing determinations of the
17 factual innocence "of a person who claims" that he or she has been victimized by identity
18 theft. The use of that phrase inadvertently suggests that the only person who has standing
19 to seek relief under the Rule is the victim of identity theft. A.R.S. § 12-771(A), however,
20 also confers standing upon the prosecuting agency to seek relief on behalf such a person.
21 To remedy this oversight, proposed amended section (a) would modify current Rule
22 57.1(A) to clarify that A.R.S. § 12-771(A) permits either an aggrieved person or a
23 prosecuting agency to petition the superior court for relief.

24 **Proposed Section (b): Filing; Caption; Identifications of the Prior Action and**
25 **Certain Agencies or Persons.** The State Bar's proposed section (b) would further clarify
26 the provisions of current Rule 57.1(B) regarding the content of a petition and where it

1 should be filed. Proposed section (b) is divided into three proposed subsections, one for
2 each issue:

3 (1) Because a petitioner may be the prosecuting agency rather than the
4 aggrieved person, proposed subsection (1) would modify current Rule 57.1(B) to
5 prescribe that the caption should be in the name of the aggrieved person rather than the
6 “petitioner.” Additionally, proposed subsection (1) would modify the language of current
7 Rule 57.1(B) so that it more closely parallels the language of A.R.S. § 12-771(B).

8 (2) Proposed subsection (2) substantively tracks one of the provisions in
9 current Rule 57.1(B), with only a few stylistic changes.

10 (3) To facilitate compliance with the statute’s notice requirements,
11 proposed subsection (3) would add an administrative requirement that the petition identify
12 the names and mailing addresses of certain entities or persons if they are not otherwise
13 parties to the action. Depending on the circumstances, A.R.S. § 12-771(H) requires the
14 court to notify the prosecuting agency, the law enforcement agency, and/or the defense
15 attorney of a finding of “factual innocence,” but the statute does not provide a means for
16 the court to find out where notice should be sent if the entity or person is not a party to the
17 action. *See* A.R.S. § 12-771(D) & (E) (specifying that a petition must be served on the
18 prosecuting agency (with a copy sent defense counsel) if a charge was filed and upon the
19 arresting or citing law enforcement agency if no charge was filed). Requiring this
20 information to be included in the petition would correct this oversight and provide the
21 courts with the mailing information they will need to comply with the statute’s notice
22 provisions.

23 **Proposed Section (c): Service; Notice.** The State Bar’s proposed section (c)
24 would expand the current rule’s service provisions. Currently, Rule 57.1(C) provides
25 merely that “[t]he Petitioner shall serve the petition in the manner prescribed by A.R.S.
26 section 12-771 and by these rules.” The State Bar is concerned that this provision does

1 not provide *pro per* litigants or practitioners with sufficient guidance about effecting
2 service. The statute's service requirements vary as to who should be served with a
3 petition, depending on whether a charge was filed. The statute also does not clearly state
4 that service should be effected pursuant to Arizona Rule of Civil Procedure Rule 4.1
5 rather than Rule 5, which may lead a *pro per* litigant to attempt "service" merely by
6 mailing a petition to the prescribed entity or individual. Last, the statute requires certain
7 parties to be "notified" of the proceeding rather than be served as a party, which is likely
8 to confuse *pro per* litigants and practitioners alike.

9 In addition to modifying the title of current Rule 57.1(C) by adding "notice" in
10 addition to "service," the State Bar's proposed section (c) attempts to remedy these
11 concerns by substantially reworking current Rule 57.1(C) in two proposed subsections:

12 (1) Proposed subsection (1) would spell out the statute's service
13 requirements as they are set forth in A.R.S. § 12-771 (D) and (E). Additionally, while it is
14 implied in the statute, proposed subsection (1) also would make it explicit that service
15 must be made pursuant to Rule 4.1 and not Rule 5 of the Arizona Rules of Civil
16 Procedure.

17 (2) Proposed subsection (2) would incorporate the requirements in
18 A.R.S. §§ 12-771(E) and 13-4440, which provide that notice of the petition must be
19 provided, if a criminal charge was filed, to a victim of a criminal offense and to any
20 attorney who appeared as counsel of record for the defendant in connection with such an
21 offense. These provisions are not incorporated into the current rule and their inclusion,
22 again, would eliminate guesswork and minimize the possibility that the statute's notice
23 requirements would be overlooked.

24 **Proposed Section (d): Transmission of Records.** The State Bar's proposed
25 section (d) retains most of the language in current Rule 57.1(D), which requires the clerk
26 to obtain records related to criminal charges filed in a justice or municipal court. To add

1 clarity, a provision was added that would expressly direct the clerk to transmit a copy of
2 the case file to the judge assigned to the case.

3 **Proposed Section (e): Discovery; Disclosure.** The State Bar's proposed section
4 (e) basically tracks the discovery provision set forth in current Rule 57.1(E), but it would
5 extend the limitation on discovery to disclosures that would otherwise be required under
6 Arizona Rule of Civil Procedure 26.1.

7 Although A.R.S. § 12-771 does not address the scope of disclosure or discovery
8 that should be allowed in such proceedings, the State Bar agrees that a discovery
9 limitation is appropriate. Most of the facts relating to a petitioner's claim should
10 already be within a petitioner's possession. The discovery and disclosures contemplated
11 by Rule 26.1 and available through Rules 26-37 likely will not be necessary in the
12 majority of cases because of the relatively simple issues involved in such matters. The
13 current and proposed restrictions on disclosure and discovery preserve the right to conduct
14 more extensive discovery in appropriate circumstances, settle any questions about a
15 party's disclosure obligations, and reduce the potential for discovery abuse by a
16 disgruntled criminal defendant.

17 **Proposed Section (f): Redacted Filings; Filings Under Seal.** The State Bar
18 proposes adding a new section (f) addressing filings under seal or in redacted form. In
19 many circumstances, a petitioner likely will be required to provide the court with personal
20 identifying information to explain why an aggrieved person is entitled to relief. If such
21 information is disclosed in an action authorized under A.R.S. § 12-771, it could become a
22 matter of public record and used in that same way that resulted in the need for an
23 aggrieved person to seek relief in the first place. These concerns are aggravated if the
24 action involves a criminal defendant with a history of committing identity theft. Although
25 a petitioner may currently seek a protective order under Rule 26 to file papers under seal
26 or in redacted form, the State Bar believes it would aid litigants (especially if they are

1 proceeding *pro per*) if the Rule expressly recognizes a court's authority to enter such
2 orders in proceedings under the statute and rule.

3 **Proposed Section (g): Hearing; Determination; Notice.** The State Bar's
4 proposed section (g) would incorporate the requirements and standards for hearings and
5 post-hearing procedures set forth in current Rule 57.1 (F), (G) and (H) into a single
6 section with four subsections:

7 (1) The first sentence of proposed subsection (1), which states that a
8 court "may" hold a hearing, parallels current Rule 57.1(G)(1). The second sentence
9 would add a provision that would preclude a court from denying a petition without
10 first holding a hearing. Although the statute states merely that a court "may" hold a
11 hearing, the State Bar believes that the statute's intent would be better effectuated (and
12 that the perceived fairness of the process would be enhanced) if a petitioner is at least
13 guaranteed the right to present his or her position in a hearing if the court is otherwise
14 inclined to deny the petition. The third sentence, relating to the notice that must be
15 provided if a hearing is held, generally parallels current Rule 57.1(G)(2), but also would
16 address two issues related to A.R.S. § 12-771(E)(2). First, current Rule 57.1(G)(2)
17 appears to require notice of a hearing to a victim of a criminal offense even if criminal
18 charges were not filed, which is inconsistent with the statute. To correct this
19 inconsistency, the proposed rule would make it clear (as is prescribed under the statute)
20 that such notice must be given only if the petition relates to the filing of a criminal charge.
21 Second, to add clarity, the proposed rule would set forth the notice mechanism described
22 in the statute, which is not included in the current rule.

23 (2) Proposed subsection (2) parallels current Rule 57.1(G)(3), which
24 allows a court to rule on a petition on the basis of affidavits (and presumably other written
25 proof supported by an affidavit). A.R.S. § 12-771 does not expressly provide such
26 authority, but the State Bar endorses this provision. In most instances, the court will be

1 able to establish a person's identity and rule on a petition solely on the basis of
2 documentation provided by the petitioner. In these instances, proof solely by affidavit
3 will promote the interests of judicial economy. Proposed subsection (2) also would allow
4 proof to be made by any method permitted by Rule 80(i), which would allow the use of
5 declarations as well as affidavits.

6 (3) The State Bar's proposed subsection (3) incorporates current Rule
7 57.1(F), which provides that a petitioner must establish factual innocence by "clear and
8 convincing evidence." To add clarity and to make it easier for *pro per* litigants to seek
9 relief under the statute, proposed subsection (3) also sets forth what a petitioner must
10 show to obtain relief, as is described in A.R.S. § 12-771(G).

11 (4) The State Bar's proposed subsection (4) parallels current Rule
12 57.1(H) regarding notice following a court's decision, but it would expressly require
13 notice to be provided not only when the court finds in a petitioner's favor but also when
14 relief is denied. The statute and current rule requires notice only if a court makes on a
15 finding of "factual innocence," which leaves it unclear whether a court must afford notice
16 only when it finds that the aggrieved person is "factually innocent" or if notice also is
17 required if any finding is made on the issue. To eliminate this ambiguity, the proposed
18 subsection would expressly require notice irrespective of the court's ruling on the issue.

19 **Proposed Amendments to Rule 57.2**

20 The amendments that the State Bar proposes to current Rule 57.2 largely track
21 those amendments that the State Bar is proposing to current Rule 57.1 and are
22 recommended for the same reasons.

23 **Proposed Section (a): Scope.** Similar to the proposed Rule 57.1(a), the State
24 Bar's proposed section (a) would modify current Rule 57.2(A) to clarify that under A.R.S.
25 § 12-772(A), either an aggrieved person or a party representing the person may petition
26 the superior court for relief.

1 **Proposed Section (b): Filing; Caption; Identification of the Prior Action.** The
2 State Bar's proposed section (b) would clarify Rule 57.2(B)'s provisions governing the
3 style and substance of the petition. Unlike current Rule 57.2(B), proposed Rule 57.2(b)
4 would provide an instruction for the form of the caption, which would make the rule
5 consistent with its counterpart in Rule 57.1. It also adopts caption language similar to
6 proposed Rule 57.1(b) for the same reasons previously stated.

7 **Proposed Section (c): Service.** Like the State Bar's proposed Rule 57.1(c),
8 proposed Rule 57.2(c) would make it explicit that service must be accomplished pursuant
9 to Arizona Rule of Civil Procedure 4.1.

10 **Proposed Section (d): Transmission of Records.** The State Bar's proposed
11 section (d) mirrors the changes set forth in proposed Rule 57.1(d).

12 **Proposed Section (e): Discovery; Disclosure.** The State Bar's proposed section
13 (e) includes the additional proposed discovery limitations set forth in proposed Rule
14 57.1(e).

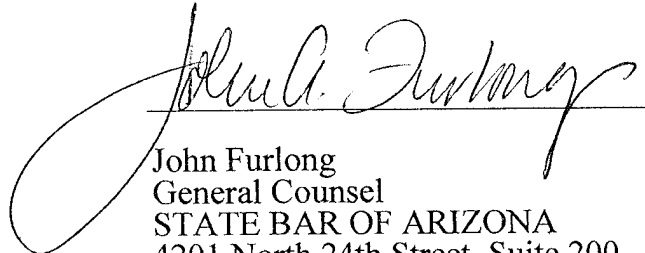
15 **Proposed Section (f): Redacted Filings; Filings Under Seal.** The State Bar's
16 proposed section (f) would add the protections for an aggrieved person's personal
17 identifying information set forth in proposed Rule 57.1(f).

18 **Proposed Section (g): Hearing; Determination; Notice.** The State Bar's
19 proposed section (g) tracks the changes suggested in proposed Rule 57.1(g)(1-3). Because
20 the parties listed in current Rule 57.2(H) will all have been served, they will receive the
21 notice required by A.R.S. § 12-772(G) as a matter of course. Therefore, the proposed rule
22 deletes the notice provisions set forth in current Rule 57.2(H).

23 **Conclusion**

24 The State Bar of Arizona respectfully requests that the Court adopt its proposed
25 amendments to current Rules 57.1 and 57.2 for all of the reasons suggested in this
26 comment.

1 RESPECTFULLY SUBMITTED this 21st day of April 2009.
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5 _____
6 John Furlong
7 General Counsel
8 STATE BAR OF ARIZONA
9 4201 North 24th Street, Suite 200
10 Phoenix, Arizona 85016
11

12 Electronic copy filed with the
13 Clerk of the Supreme Court of Arizona
14 this 21st day of April 2009.
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16 by: Kathleen Lundgren
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EXHIBIT A

1 **Rule 57.1 Declaration of Factual Innocence**

2 ~~(a)A.~~ **Scope of rule.** This ~~R~~rule governs the procedure to be followed when an
3 aggrieved person, or prosecuting agency on behalf of that person, petitions the superior
4 court for a judicial determination of the person's ~~the determination of~~ factual innocence
5 of a person who claims pursuant to A.R.S. §section 12-771 when the aggrieved person or
6 prosecuting agency alleges that the person's personal identifying information was taken,
7 and, as a result, the person's name was either: (1) was used by another person who was
8 arrested, cited, or charged with a criminal offense; or (2) entered as of record in a
9 judgment of guilt in a criminal case.

10 **B.(b) Filing; Caption; Identification of the Prior Action and Certain**
11 **Agencies or Persons.**

12 (1) A petition brought under this ~~R~~rule shall be filed in the ~~S~~superior
13 Court ~~for~~ in the county in which the other person was arrested was made for, or the
14 citationed was issued or the charged was filed with, a criminal offense. The petition shall
15 be assigned a civil case number and be captioned: "In re: name of the aggrieved
16 personpetitioner)."

17 (2) If a criminal charge was filedapplicable, the petition shall identify
18 state the ~~specific court location~~ where the underlying charge was filed, or the judgment of
19 guilt was entered, and ~~along with~~ and the case number of that prior criminal
20 proceedingfiling. The petition shall be captioned: In re: (name of petitioner).

21 (3) The petition also shall identify, as applicable and if not served
22 under Rule 57.1(c), the names and mailing addresses of the arresting or citing law
23 enforcement agency, the prosecuting agency that filed the criminal charge, and, if a
24 criminal charge was filed, the attorney (if any) who is currently appearing as counsel of

1 record for the defendant in the criminal proceeding or was appearing as counsel of record
2 for the defendant when the criminal proceeding terminated.

3 **C.(c) Service; Notice.** ~~The Petitioner shall serve the petition in the manner~~
4 ~~prescribed by A.R.S. section 12-771 and by these rules.~~

5 (1) If no criminal charge was filed, the petition shall be served under
6 Rule 4.1 on the arresting or citing law enforcement agency in the manner set forth in Rule
7 4.1. If a criminal charge was filed and the petition is filed by the aggrieved person and
8 not the prosecuting agency on behalf of the aggrieved person, the petition shall be served
9 under Rule 4.1 on the prosecuting agency that filed the criminal charge in the manner set
10 forth in Rule 4.1 and provided to the attorney (if any) who is currently appearing as
11 counsel of record for the defendant in the criminal proceeding or was appearing as
12 counsel of record for the defendant when the criminal proceeding terminated.

13 (2) If a criminal charge was filed:

14 (A) The prosecuting agency, upon the filing of a petition, shall,
15 pursuant to A.R.S. § 13-4440, provide notice of the petition pursuant to A.R.S. § 13-4440
16 to any all victims of the criminal offense at issue.

17 (B) The petitioner shall deliver a copy of the petition to any
18 attorney who appeared as counsel of record for the criminal defendant.

19 **(d)D. Transmission of Records.** If the petition is related to a criminal charge
20 filed in a justice of the ~~peace~~-court or a municipal court, the ~~c~~Clerk of the Superior ~~c~~Court
21 shall request a copy of the case file the following items from the justice of the peace or
22 presiding officer of the municipal court and transmit them copy to the superior court
23 judge assigned to the action to transmit a copy of the file to the Clerk's office: (1) all
24 papers in the case; (2) a copy of all proceedings as shown by the docket; and (3) all
25 orders entered in the action. Upon receipt of the requested items, the clerk of court shall.
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1 ~~(e)E.~~ **Discovery; Disclosure.** Discovery may be conducted, and disclosures
2 under Rule 26.1 may be required, only upon stipulation of the petitioner and the served
3 parties, or by court order of the court.

4 **(f) Redacted Filings; Filings Under Seal.** A petitioner or an aggrieved
5 person, if not the petitioner, may request, and a court may order, that a filing containing
6 potentially sensitive identifying information (such as an aggrieved person's social
7 security number, financial account numbers or birth date) be filed or retained in redacted
8 form or under seal.

9 ~~F.~~ ~~Evidence. The Petitioner must establish factual innocence by clear and~~
10 ~~convincing evidence.~~

11 **(g)G. Hearing; and Determination; Notice.**

12 ~~(1)4.~~ The ~~c~~Court may hold a hearing to determine the aggrieved
13 person's~~Petitioner's~~ factual innocence. The court may not deny the relief sought in a
14 petition without a the petitioner's consent unless it first conducts a hearing.

15 ~~2.~~—If the ~~c~~Court holds a hearing, and if the petition relates to the filing
16 of a criminal charge, the prosecuting agency shall provide notice of the hearing pursuant
17 to A.R.S. § 13-4440 to all anythe victims of the criminal offense at issue. Any such
18 Every victim shall have identified in a judgment of guilt, or committed by the person
19 arrested for, or cited or charged with, a criminal offense, has a right to be present and to
20 be heard at the hearing.

21 ~~(2)3.~~ If the ~~c~~Court does not hold a hearing, an order entered pursuant to
22 this ~~R~~rule may be entered upon submission of proof by affidavit or any method
23 authorized by Rule 80(i).

24 ~~(3)~~ The court shall find the aggrieved person factually innocent of the
25 criminal offense if it finds by clear and convincing evidence that as of a result of the
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1 aggrieved person's personal identifying information being taken by another person, his or
2 her name was either:

3 (A) used by another person who was arrested, cited, or charged
4 with a criminal offense; or

5 (B) entered as of record in a judgment of guilt in a criminal
6 case.

7 (4)H. ~~Order.~~ Upon entry of an order ruling on the a petitioner's request
8 for relief a judicial determination of factual innocence, On a finding of factual innocence
9 related to an arrest, citation, or charge, the clerk of cCourt shall deliver a copy of the
10 order notify the following persons, if applicable: to the pPetitioner and, as applicable
11 aggrieved person, ;the prosecuting agency, which filed the charge; the arresting or citing
12 law enforcement agency, which made the arrest or issued the citation; and, if a criminal
13 charge was filed, anythe defense the attorney (if any) who is currently appearing as
14 counsel of record for the defendant in the criminal proceeding or was appearing as
15 counsel of record for the defendant when the criminal proceeding terminated.

1 **Rule 57.2 Declaration of Factual Improper Party Status**

2 ~~(a)A.~~ **Scope of rule.** This rule governs the procedure to be followed when an
3 aggrieved person, or a party to a civil action on behalf of that person, petitions the superior
4 court for a judicial determination of the aggrieved person's status as alleging a factual
5 improper party status pursuant to A.R.S. §section 12-772, when the aggrieved person or
6 representative a party to the action on behalf of the aggrieved person alleges that if as a
7 result of a person's personal identifying information being taken, the person's name was
8 entered as of record in a civil action or judgment.

9 ~~(b)B.~~ **Filing; Caption; Identification of the Prior Action.** A petition brought
10 under this Rrule shall be filed in the Ssuperior Ccourt for the county in which the civil action
11 was filed, which resulted in the aggrieved person's Petitioner's name was being entered as
12 of record in a civil action or judgment because of alleged based upon the improper use of
13 thate person'sPetitioner's personal identifying information. The petition shall be assigned a
14 civil case number and be captioned: "In re: (name of the aggrieved person)." The petition
15 shall identifystate the specific court location where the underlying civil action was filed, and
16 the underlying action's case number of the underlying action of the prior filing.

17 ~~(c)C.~~ **Service.** ~~The Petitioner shall serve t~~The petition shall be served under in the
18 manner set forth in Rule 4.1 or 4.2 in the manner prescribed by these rules on eachall
19 partyies named in the underlying civil action in which the pPetitioner's alleges that the
20 aggrieved person's name was improperly entered as of record or in the action's judgment
21 identity was allegedly used.

22 ~~(d)D.~~ **Transmission of Records.** If the petition is related to a case filed in a
23 justice of the peace court, the cClerk of the Superior cCourt shall request a copy of the case
24 file the following items from the justice of the peace and to transmit thea copy them to the
25 superior court judge assigned to the actionof the file to the Clerk's office.: (1) a certified
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1 copy of all docket entries and the record of the proceedings in the underlying action; (2) a
2 certified copy of the bill of costs; and (3) the original papers in the underlying action.

3 **(e)E. Discovery; Disclosure.** Discovery may be conducted, and disclosures under
4 Rule 26.1 may be required, only upon stipulation of the petitioner and the served interested
5 parties, or by court order of the court.

6 ~~F. Evidence. The Petitioner must establish improper party status by clear and~~
7 ~~convincing evidence.~~

8 **(f) Redacted Filings; Filings Under Seal.** A petitioner or an aggrieved person,
9 if not the petitioner, may request, and a court may order, that a filing containing potentially
10 sensitive identifying information (such as an aggrieved person's social security number,
11 financial account numbers or birth date) be filed or retained in redacted form or under seal.

12 **(g)G. Hearing; Determination; Notice.**

13 ~~(1)1. The cCourt may hold a hearing on the petition. The court may not~~
14 ~~deny the relief sought in a petition without at the petitioner's consent unless it first conducts a~~
15 ~~hearing.~~

16 ~~(2)2. If the cCourt does not hold a hearing, an order entered pursuant to this~~
17 ~~Rrule may be entered upon submission of proof by affidavit or any method authorized by~~
18 ~~Rule 80(i).~~

19 ~~(3) The court shall find the aggrieved person to be a "factual improper~~
20 ~~party" to an underlying civil action or judgment if it finds by clear and convincing evidence~~
21 ~~that as of a result of the person's personal identifying information being taken by another~~
22 ~~person, the aggrieved person was not a proper party to the civil action or judgment.~~

23 ~~H. Order. The Court shall provide notice of the Court's findings to the Petitioner~~
24 ~~and to all parties in the civil action in which the Petitioner's identity was allegedly used.~~
25 Order. The court shall provide notice of its findings to the aggrieved person and all parties
26 to the underlying civil action.

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EXHIBIT B

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1 **Rule 57.1 Declaration of Factual Innocence**

2 **(a) Scope.** This Rule governs the procedure to be followed when an aggrieved
3 person, or prosecuting agency on behalf of that person, petitions the superior court for a
4 judicial determination of the person's factual innocence pursuant to A.R.S. § 12-771 when
5 the aggrieved person or prosecuting agency alleges that the person's personal identifying
6 information was taken and, as a result, the person's name was either: (1) used by another
7 person who was arrested, cited or charged with a criminal offense; or (2) entered as of
8 record in a judgment of guilt in a criminal case.

9 **(b) Filing; Caption; Identification of the Prior Action and Certain Agencies**
10 **or Persons.**

11 (1) A petition brought under this Rule shall be filed in the superior court
12 for the county in which the arrest was made, the citation was issued or the charge was filed.
13 The petition shall be assigned a civil case number and be captioned: "In re: name of the
14 aggrieved person."

15 (2) If a criminal charge was filed, the petition shall identify the court
16 where the underlying charge was filed, or the judgment of guilt was entered, and the case
17 number of that criminal proceeding.

18 (3) The petition also shall identify, as applicable and if not served under
19 Rule 57.1(c), the names and mailing addresses of the arresting or citing law enforcement
20 agency, the prosecuting agency that filed the criminal charge, and, if a criminal charge was
21 filed, the attorney (if any) who is currently appearing as counsel of record for the defendant
22 in the criminal proceeding or was appearing as counsel of record for the defendant when the
23 criminal proceeding terminated.

24 **(c) Service; Notice.**

25 (1) If no criminal charge was filed, the petition shall be served on the
26 arresting or citing law enforcement agency in the manner set forth in Rule 4.1. If a criminal

1 charge was filed and the petition is filed by the aggrieved person and not the prosecuting
2 agency on behalf of the aggrieved person, the petition shall be served on the prosecuting
3 agency that filed the criminal charge in the manner set forth in Rule 4.1 and provided to the
4 attorney (if any) who is currently appearing as counsel of record for the defendant in the
5 criminal proceeding or was appearing as counsel of record for the defendant when the
6 criminal proceeding terminated.

7 (2)

8 The prosecuting agency, upon the filing of a petition, shall, pursuant
9 to A.R.S. § 13-4440, provide notice of the petition to all victims of the criminal offense.

10 **(d) Transmission of Records.** If the petition is related to a criminal charge filed
11 in a justice court or a municipal court, the clerk of court shall request the following items
12 from the justice of the peace or presiding officer of the municipal court and transmit them to
13 the superior court judge assigned to the action: (1) all papers in the case; (2) a copy of all
14 proceedings as shown by the docket; and (3) all orders entered in the action. Upon receipt
15 of the requested items, the clerk of court shall.

16 **(e) Discovery; Disclosure.** Discovery may be conducted, and disclosures under
17 Rule 26.1 may be required, only upon stipulation or by court order.

18 **(f) Redacted Filings; Filings Under Seal.** A petitioner or an aggrieved person,
19 if not the petitioner, may request, and a court may order, that a filing containing potentially
20 sensitive identifying information (such as an aggrieved person's social security number,
21 financial account numbers or birth date) be filed or retained in redacted form or under seal.

22 **(g) Hearing; Determination; Notice.**

23 (1) The court may hold a hearing to determine the aggrieved person's
24 factual innocence. The court may not deny the relief sought in a petition without the
25 petitioner's consent unless it first conducts a hearing.

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1 If the court holds a hearing and if the petition relates to the filing of a
2 criminal charge, the prosecuting agency shall provide notice of the hearing pursuant to
3 A.R.S. § 13-4440 to all victims of the criminal offense. Every victim shall have a right to
4 be present and to be heard at the hearing.

5 (2) If the court does not hold a hearing, an order entered pursuant to this
6 Rule may be entered upon submission of proof by affidavit or any method authorized by
7 Rule 80(i).

8 (3) The court shall find the aggrieved person factually innocent of the
9 criminal offense if it finds by clear and convincing evidence that as of a result of the
10 aggrieved person's personal identifying information being taken by another person, his or
11 her name was either:

12 (A) used by another person who was arrested, cited or charged
13 with a criminal offense; or

14 (B) entered as of record in a judgment of guilt in a criminal case.

15 (4) Upon entry of an order ruling on a petitioner's request for a judicial
16 determination of factual innocence,, the clerk of court shall deliver a copy of the order to the
17 aggrieved person, the prosecuting agency, the arresting or citing law enforcement agency
18 and, if a criminal charge was filed, the attorney (if any) who is currently appearing as
19 counsel of record for the defendant in the criminal proceeding or was appearing as counsel
20 of record for the defendant when the criminal proceeding terminated.

1 **Rule 57.2 Declaration of Factual Improper Party Status**

2 **(a) Scope.** This rule governs the procedure to be followed when an aggrieved
3 person, or a party to a civil action on behalf of that person, petitions the superior court for a
4 judicial determination of the aggrieved person's status as a factual improper party pursuant
5 to A.R.S. § 12-772 when the aggrieved person or a party to the action on behalf of the
6 aggrieved person alleges that as a result of a person's personal identifying information being
7 taken, the person's name was entered as of record in a civil action or judgment.

8 **(b) Filing; Caption; Identification of the Prior Action.** A petition brought
9 under this Rule shall be filed in the superior court for the county in which the civil action
10 was filed, which resulted in the aggrieved person's name being entered as of record in a civil
11 action or judgment based upon the improper use of that person's personal identifying
12 information. The petition shall be assigned a civil case number and be captioned: "In re:
13 (name of the aggrieved person)." The petition shall identify the court where the underlying
14 civil action was filed, and the case number of the underlying action.

15 **(c) Service.** The petition shall be served in the manner set forth in Rule 4.1 or
16 4.2 on each party named in the underlying civil action.

17 **(d) Transmission of Records.** If the petition is related to a case filed in a
18 justice court, the clerk of court shall request the following items from the justice of the peace
19 and transmit them to the superior court judge assigned to the action: (1) a certified copy of
20 all docket entries and the record of the proceedings in the underlying action; (2) a certified
21 copy of the bill of costs; and (3) the original papers in the underlying action.

22 **(e) Discovery; Disclosure.** Discovery may be conducted, and disclosures under
23 Rule 26.1 may be required, only upon stipulation or by court order.

(f) Redacted Filings; Filings Under Seal. A petitioner or an aggrieved
 person, if not the petitioner, may request, and a court may order, that a filing containing

1 potentially sensitive identifying information (such as an aggrieved person's social security
2 number, financial account numbers or birth date) be filed or retained in redacted form or
3 under seal.

4 **(g) Hearing; Determination; Notice.**

5 (1) The court may hold a hearing on the petition. The court may not deny
6 the relief sought in a petition without the petitioner's consent unless it first conducts a
7 hearing.

8 (2) If the court does not hold a hearing, an order entered pursuant to this
9 Rule may be entered upon submission of proof by affidavit or any method authorized by
10 Rule 80(i).

11 (3) The court shall find the aggrieved person to be a "factual improper
12 party" to an underlying civil action or judgment if it finds by clear and convincing evidence
13 that as of a result of the person's personal identifying information being taken by another
14 person, the aggrieved person was not a proper party to the civil action or judgment.

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